

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

LEONARD PELTIER, CHANCEY  
PELTIER,

Plaintiffs,

v.

JOEL SACKS, individually and in his  
capacity as DIRECTOR OF the  
WASHINGTON STATE  
DEPARTMENT OF LABOR AND  
INDUSTRIES; TIMOTHY CHURCH,  
individually and in his capacity as  
PUBLIC AFFAIRS MANAGER of the  
WASHINGTON STATE  
DEPARTMENT OF LABOR AND  
INDUSTRIES; JAY INSLEE,  
individually and in his capacity as  
GOVERNOR OF THE STATE OF  
WASHINGTON; EDWARD P.  
WOODS; LARRY LANGBERG;  
DOES 1-200,

Defendants.

Case No.: 3:17-cv-05209-RBL

**EDWARD WOODS' MOTION FOR  
ATTORNEY'S FEES AND COSTS AS  
ORDERED DKT. NO. 25 Filed 07/15/17**

**Motion Noted: August 11, 2017**

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I. MOTION

Mr. Woods moves for an order awarding him attorney's fees and costs incurred defending this action pursuant to RCW 4.24.510. The Court dismissed with prejudice the complaint on July 25, 2017 Dkt. No. 25. The order allows for an award of attorney's fees and costs via motion. This motion is made within ten days of entry of the order. Mr. Woods requests a total award of fees in the amount of \$3,950.00.<sup>1</sup>

II. FACTS

The Peltiers filed this SLAPP suit against Mr. Woods in his individual capacity, forcing him to hire counsel to defend himself.<sup>2</sup> Mr. Wood retained civil counsel with experience in SLAPP litigation, who appeared on May 16, 2017.<sup>3</sup> The terms of his retention agreement were to pay III Branches Law, PLLC \$375.00 dollars per hour for Ms. Mell's time and \$175.00 per hour for paralegal time. Mr. Woods paid a \$500.00 retainer fee for Ms. Mell to commence advocating on his behalf. Ms. Mell has approximately twenty-six years experience working in state and federal courts in Washington. Her rates have been approved as reasonable by the courts.<sup>4</sup> Mr. Woods waives recovery of any paralegal time, and simply requests reimbursement of his attorney's fees. He has not yet incurred any costs.

Mr. Woods notified plaintiffs that he intended to assert SLAPP immunity prior to filing his motion to dismiss.<sup>5</sup> Plaintiffs' counsel was provided the opportunity to amend and or withdraw the complaint without incurring fees and costs to Mr. Woods. Plaintiffs elected to take no action despite actual knowledge of the precise applicable immunity. Plaintiffs provided no good faith basis for

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<sup>1</sup> Woods Dec.

<sup>2</sup> Dkt. 1 (Complaint).

<sup>3</sup> Dkt. 13.

<sup>4</sup> Mell Dec. Ex. B (Nissen Order); *Dalsing v. Pierce County*, 190 Wn. App. 251, 357 P.3d 80 (2015).

<sup>5</sup> Mell Dec.

1 claiming the suit was not a SLAPP suit covered by RCW 4.24.510. Mr. Woods moved for SLAPP  
 2 protection, and the order was granted in accordance with the statute.<sup>6</sup>

#### 3 4 IV. LEGAL AUTHORITY

5 Washington's Anti-SLAPP provision, RCW 4.24.510, protects individuals from strategic  
 6 lawsuits against public participation by mandating plaintiff pay the individual's attorney's fees and  
 7 costs in a SLAPP suit.<sup>7</sup> When a person prevails under RCW 4.24.510, the person is entitled to  
 8 recover expenses and reasonable attorney fees.<sup>8</sup> A full award of attorney's fees and costs incurred in  
 9 a SLAPP suit under RCW 4.24.510 is appropriate.<sup>9</sup>

10 The lodestar calculation is the proper method for determining the amount of fees to award.<sup>10</sup>  
 11 The lodestar calculation multiplies a reasonable hourly rate by the reasonable number of hours  
 12 incurred in obtaining a successful result.<sup>11</sup> Where an attorney has an established billable rate, that  
 13 rate is considered a reasonable rate.<sup>12</sup> Here, Ms. Mell's rate is \$375.00 per hour, which is a rate  
 14 customary for experienced counsel in Pierce County.<sup>13</sup> \$375.00 per hour for an attorney of her  
 15 experience on the issues before the court is a reasonable rate. Ms. Mell is an experienced civil  
 16 litigator with the applicable expertise specific to SLAPP immunity.<sup>14</sup> Her fees at this level have  
 17 been approved at the trial level and on appeal.  
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24 <sup>6</sup> Dkt. 25.

25 <sup>7</sup> RCW 4.24.510: "A person prevailing upon the defense provided for in this section is entitled to recover expenses and  
 reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten  
 thousand dollars."

26 <sup>8</sup> *Bailey v. State*, 147 Wn. App. 251, 191 P.3d 1285 (2008).

27 <sup>9</sup> *Gontmakher v. The City of Bellevue*, 120 Wn. App. 365, 85 P.3d 926 (2004).

28 <sup>10</sup> *Mahler v. Szucs*, 135 Wn. 2d 398, 433-34, 957 P.2d 632 (1998).

29 <sup>11</sup> *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 150, 859 P.2d 1210 (1993).

30 <sup>12</sup> *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983).

31 <sup>13</sup> RPC 1.5(a)(3); Mell Dec.

<sup>14</sup> Mell Dec.

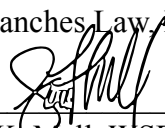
1 With regard to the number of hours incurred, Ms. Mell worked with other defense counsel to  
 2 avoid duplication of effort.<sup>15</sup> Mr. Wood authenticates in his declaration the itemized statement of the  
 3 time kept contemporaneously with the hours actually billed at Ex. A to the Mell Declaration as  
 4 necessary for a fee application.  
 5

#### 6 IV. CONCLUSION

7 Based upon the above facts and law, Mr. Wood submits his request for attorney's fees in the  
 8 amount of \$3,950.00. He did not incur costs at this early stage, and therefore does not seek to  
 9 recover any costs. Mr. Woods understands the court denied any penalty recovery without entering  
 10 any findings as to bad faith, which Mr. Woods does not challenge in this fee application. While not  
 11 at issue here, Mr. Woods reasserts that he has at all times acted in good faith.  
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13 Dated this 1st day of August, 2017 at Fircrest, WA.

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 15 III Branches Law, PLLC

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 18 Joan K. Mell, WSBA #21319  
 19 Attorney for Edward Woods  
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30 <sup>15</sup> Mell Dec.

**CERTIFICATE OF SERVICE**

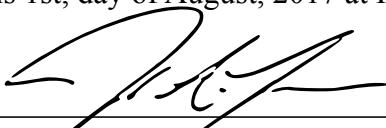
I, Joseph Fonseca, hereby certify as follows:

I am over the age of 18, a resident of Pierce County, and not a party to the above action. On August 1, 2017, I electronically filed the above Edward Woods' Motion For Attorney's Fees and Costs, with the Clerk of the Court using the CM/ECF system and served via Email to the following:

ATTORNEY NAME & ADDRESS	METHOD OF DELIVERY
Lawrence A. Hildes Law Offices of Lawrence A. Hildes P.O. Box 5405 Bellingham, Washington 98227 lhildes@earthlink.net	<input checked="" type="checkbox"/> CM/ECF E-Service <input checked="" type="checkbox"/> E-mail
Peter J. Helmberger Office of the Attorney General 1250 Pacific Avenue, Suite 105 Tacoma, Washington, WA 98401	
Kyle D. Riley Jeremy H. Rogers Smith, Freed & Eberhard, P.C. 705 Second Avenue, Suite 1700 Seattle, WA 98104 kriley@smithfreed.com jrogers@smithfreed.com	

I certify under penalty of perjury under the laws of the State of Washington that the above information is true and correct.

DATED this 1st, day of August, 2017 at Fircrest, Washington.

  
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 Joseph Fonseca, Paralegal